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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/901,749	07/09/2001	Richard Rodenbusch	066416.0106	8455

33438 7590 11/05/2003

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EXAMINER

MWANYOHA, SADIKI P

ART UNIT	PAPER NUMBER
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2642

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DATE MAILED: 11/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/901,749

Applicant(s)

RODENBUSCH ET AL.

Examiner

Sadiki Mwanyoha

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/9/01.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16, 19-27, 29-35, 38-43, 48 is/are rejected.
- 7) ☒ Claim(s) 17, 18, 28, 36, 37 and 44-47 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claim 22 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 22 recites the limitation "the campaign". There is insufficient antecedent basis for this limitation in the claim. Applicant may note, however, that this limitation is first introduced in claim 21.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1,2,3,8-15,21-24,26,27,29-32, 34,35,38-43 are rejected under 35 U.S.C. 102(e) as being anticipated by US patent 5,963,635 to Szlam et al.

Regarding claim 1, Szlam et al. discloses a "Method and apparatus for providing result-oriented customer service". The invention relates to automated customer service systems and, more particularly, is an automated customer service system, which accommodates both inbound and outbound communications (i.e. a system for distributing outbound telephone calls), which uses a variety of media, and which has a user-programmable strategy, so as to provide result-oriented

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customer service [see Szlam et al. col. 1, line 10]. With reference to Szlam et al. Fig. 1, the invention comprises agent workstations (12) (i.e. provide a plurality of telephone calls to one or more agents), a modem server (17), a facsimile server (18) (i.e. plurality of dialing devices) and a system controller (11) (i.e. distribution module), which is coupled to the other devices via network (14) (i.e. interfaced with the plurality of dialing devices). According to the invention, the controller (11) obtains one or more calling lists (i.e. including a plurality of pools) from a host (10), each calling list containing call records (i.e. the distribution module operable to place the call records into the pools) [see Szlam et al. col. 9, line 25]. Each calling list is for a different campaign and the call records contained therein are for processing by agent workstations (12), modem server (17) and facsimile server (18) (i.e. operable to receive a plurality of call records). The controller (11) establishes several queues for each campaign (i.e. plurality of queues) [see Szlam et al. col. 9, line 35]. One of these queues is a 'to-be-called' queue, which initially will contain a list of all the records associated with a specific campaign, as opposed to global list of all the records (i.e. transfer less than all of the call records from the pools to the queues). Other queues, such as the fax queue and modem queue, contain lists of numbers to which specific types of messages are to be sent (i.e. facsimile messages and electronic mail messages) [see Szlam et al. col. 9, line 40].

Regarding claim 2, further note that according to the invention of Szlam et al., the controller (11) (i.e. distribution module) obtains customer records (i.e. call records) from the host (10) and controls the placement (i.e. controls the coordination) of outbound calls (i.e. dialing devices) [see Szlam et al. col. 8, line 30].

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Regarding claim 3, further note that according to the invention of Szlam et al., when the end of a queue has been reached at step 655 (i.e. when the dialing devices have called the call records initially transferred to the queues) new call records are obtained at step 402 (i.e. the distribution module transfers additional call records from the pools to the queues) [see Szlam et al. col. 21, line 60; also Fig. 6B].

Regarding claims 8 and 9, further note that according to the invention of Szlam et al., controller (11) (i.e. distribution module) logs the result of each call (i.e. call attempt result) into the appropriate queue. After the campaign has placed a sufficient number of calls to obtain meaningful analysis, controller (11) inspects (i.e. monitors) the queues to determine the degree of success of the campaign (i.e. to determine a successful or unsuccessful call attempt result), where as shown before, the agent workstations (12), modem server (17) and facsimile server (18) (i.e. dialing devices) are responsible for executing calls (i.e. telephone calls) according to the call records on the various queues. Thus, inherently, the process of inspecting the queues comprises transferring the results of each call (i.e. the call attempt results) from the agent workstations (12), modem server (17) and facsimile server (18) (i.e. dialing devices); that is, the distribution module transfers from the dialing devices the call attempt results [see Szlam et al. col. 9, line 65].

Regarding claim 10, further note that according to the invention of Szlam et al., controller (11) (i.e. distribution module) assigns agent resources according to the number of calls that remain to be made in each campaign, among other considerations (i.e. the distribution module monitors the number of call records in the queues remaining to be called by the dialing devices) [see Szlam et al. col.10, line 55].

Regarding claim 11, further note that the invention of Szlam et al. comprises a processing strategy (i.e. plurality of selection rules) that involves defining events, and then defining the actions that should be taken when an event occurs [see Szlam et al. col. 12, line 15]. An event may be, the time of day, the hit rate, the list penetration depth, the disposition of a call, etc. An action may be to start, end or suspend a campaign (i.e. control how the pools transfer call records to the queues), to reassign agents from one campaign to another, to start or end callbacks from selected queues, etc.

Regarding claim 12, further note that according to the invention of Szlam et al., the actions defined by the processing strategy (i.e. plurality selection rules) may include setting the priority of a queue (i.e. the selection rules comprise priority rules) [see Szlam et al. col. 13, line 35].

Regarding claim 13, recall that according to the invention of Szlam et al., the events defined in the processing strategy (i.e. plurality selection rules) may include statistics such as the hit rate or penetration depth (i.e. selection rules comprise percentage rules).

Regarding claim 14, recall that according to the invention of Szlam et al., an event such as a hit rate (i.e. percentage rules) is matched (i.e. combination) with a corresponding action such as setting a queue priority (i.e. priority rules); that is, the selection rules comprise a combination of the percentage rules and the priority rules).

Regarding claim 15, further note that according to the invention of Szlam et al., an administrator may specify a campaign strategy and control the operation of the campaign. The administrator may exercise control through a workstation (12) (i.e. user interface), which is coupled to controller (11) (i.e. distribution module) via network (14) (i.e. a user interface

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operable to allow a user to control the functionality of the distribution module) [see Szlam et al. col. 9, line 5].

Regarding claim 21, recall that according to the invention of Szlam et al., the controller (11) (i.e. distribution module) establishes several queues for each campaign (i.e. associates the queues with a campaign), wherein the queues contain call records to be called by agent workstations (12), modem server (17) and facsimile server (18) (i.e. dialing devices).

Regarding claim 22, further note that according to the invention of Szlam et al., dialing may be started using the first numbers (i.e. call records), while the remaining numbers in the list (i.e. pools) are being sorted (i.e. distribution module dynamically modifies the order of the call records within the pools without stopping the campaign) [see Szlam et al. col. 14, line 50]. The system continues placing calls, even while the sort procedure is in process [see Szlam et al. col. 15, line 15].

Regarding claim 23, further note that according to the invention of Szlam et al., the controller (11) (i.e. distribution module) can immediately (i.e. dynamically) update (i.e. changes the composition of the) a sensitivity profile (i.e. call records within the pools) on behalf of a customer during the course of a campaign (i.e. without stopping the campaign) [see Szlam et al. col. 19, line 50].

Regarding claim 24, further note that according to the invention of Szlam et al., a campaign (i.e. pool) strategy, which is to be run by controller (11) (i.e. distribution module), may be scheduled to run at specified times (i.e. scheduling module interfaced with the distribution module, the scheduling module operable to schedule call records in the pools instead of the dialing devices) [see Szlam et al. col. 13, line 40].

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Regarding claim 26, further note that according to the invention of Szlam et al., if calling list A (i.e. a first pool) has reached or exceeded a penetration depth of 90% (i.e. when the call records in the first pool are depleted), then list C (i.e. a second pool) is started (i.e. the distribution module transfers call records to the queue from a first pool and transfers call records to the queue from a second pool) [see Szlam et al. col. 13, line 55].

Regarding claim 27, the limitations read broader than claim 26 and therefore, claim 27 is rejected under the same rationale.

Regarding claim 29, the subject matter claimed is similar in scope to claim 1 and is therefore, rejected under the same rationale.

Regarding claim 30, further note that according to the system of Szlam et al., the selection and order of the records (i.e. call records) to be included in a calling list (i.e. pool) are based on business strategy designed to reach a select type of customer (i.e. the pools comprise a specific and ordered group of call records) [see Szlam et al. col. 2, line 45].

Regarding claim 31, further note that the system of Szlam et al. comprises a fax (i.e. specified dialing device) queue containing lists of numbers to which a facsimile message is to be sent, as well as a modem (i.e. specified dialing device) queue containing lists of numbers to which an electronic mail message is to be sent (i.e. assigning a queue to a specified dialing device) [see Szlam et al. col. 9, line 40].

Regarding claim 32, recall that according to the system of Szlam et al., initially, all the records in a calling list (i.e. one pool) are transferred to a single to-be-called queue (i.e. one queue); that is, transferring call records from one pool to one queue.

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Regarding claim 34, recall that according to the system of Szlam et al., subsequently, the records contained in the calling list (i.e. one pool) to-be-called queue are processed into a plurality (i.e. more than one) of queues specific to each dialing device (e.g. fax, modem, voice). That is, transferring call records from one pool to more than one queue.

Regarding claim 35, see Szlam et al. as applied above to claim 21.

Regarding claim 38, further note that according to the system of Szlam et al., if the goal of a provider is to obtain a certain number of completed calls (i.e. transferring a set number of call records) then the campaign will be terminated (i.e. which allows for a set amount of calling for each queue) [see Szlam et al. col. 10, line 20].

Regarding claim 39, see Szlam et al. as applied to claims 9 and 10 with regard to uploading a plurality of call attempt results from the dialing devices to the distribution module and determining the number of call records remaining to be called in the queues, respectively. Also note that the system of Szlam et al. monitors hit (i.e. depletion) rate (i.e. depletion rate at which the dialing devices call the called records in the queues) [see Szlam et al. col. 12, line 35].

Regarding claim 40, further note that according to the system of Szlam et al., when the penetration of list (i.e. pool) A has reached 90% (i.e. based upon the number of call records remaining to be called), list C may be started (i.e. additional call records are needed in the queue) [see Szlam et al. col. 12, line 55]. Furthermore, based on the hit rate (i.e. depletion rate), list D may be started [see Szlam et al. col. 12, line 60].

Regarding claim 41, it is inherent from the foregoing that when starting a new list (i.e. pool), the call records associated with that list must be transferred to the queues (i.e. transferring additional call records from the pools to the queues).

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Regarding claim 42, see Szlam et al. as applied above to claim 20.

Regarding claim 43, see Szlam et al. as applied above to claim 11.

4. Claim 48 is rejected under 35 U.S.C. 102(e) as being anticipated by US patent 6,310,951 to Wineberg et al. Wineberg et al. discloses "Reassignment of agents". The invention is related to periodic reassignment of agents to campaigns in a call center based on a determination of an agent's recent performance. According to the invention, each campaign (i.e. a plurality of call records) may need (i.e. difficulty level) a different set of skills from agents (i.e. segmenting a plurality of call records into a plurality of difficulty levels, where the difficulty levels include a first difficulty level and a second difficulty level) [see Wineberg et al. col. 2, line 65].

Furthermore, each call center has a pool of agents of varying skills (i.e. segmenting a plurality of agents into plurality of skill levels, where the skill levels include a first skill level and a second skill level) [see Wineberg et al. col. 3, line 1]. Inherently, agents are initially assigned to campaigns such that their skill (i.e. skill level) matches the needs (i.e. difficulty level) of the campaign (i.e. plurality of call records); i.e. transferring the call records having the first difficulty level to a plurality of agents having the first skill level; transferring the call records having the second difficulty level to a plurality of agents having the second skill level). Agents who maintain superior performance (i.e. when the agents having the first skill level deplete the call records having the first difficulty level), will be reassigned (i.e. transferring) to a more demanding (i.e. second difficulty level) campaign (i.e. plurality of call records); i.e. transferring the call records having the second difficulty level to the agents having the first skill level.

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Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 20 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Szlam et al. in view of US patent 5,297,195 to Thorne et al.

Regarding claim 20, as shown above, Szlam et al. does teach the system of claim 1. However, Szlam et al. does not teach the distribution module redistributes call records to the pools based upon the unsuccessful call attempt results.

Nevertheless, Thorne et al. discloses a "Method and apparatus for automatic telephone scheduling system". The invention pertains to the automated scheduling and placement of numerous telephone calls [see Thorne et al. col. 1, line 5]. According to the method of Thorne et al., a data server (22) (i.e. distribution module), which is responsible for managing a campaign, obtains account records, which have yet to be processed for the campaign, from memory (78A) (i.e. pool) [see Thorne et al. col. 9, lines 30-68]. Upon obtaining the next record for processing for the designated campaign, the data server (22) transfers the entire account record (162) to the dial server (24) (i.e. dialing device). The dial server (24) proceeds to attempt the call, and if the call is unanswered (i.e. based upon the unsuccessful call attempt results), the dial server (24) generates a notification message for the data server (22), whereupon, the data server (22) stores

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(i.e. redistributes) the record (i.e. the call records) in memory (78A) so that the record will again be accessed at a subsequent time in connection with its associated campaign.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system taught by Szlam et al. such that the call records are redistributed from the queues back to the calling lists (i.e. pools), since such a measure would ensure that the status of previous call attempts would be available to agents handling a particular call record for the first time.

Regarding claim 25, further note that according to the invention of Szlam et al. in view of Thorne et al., the records (i.e. call records) for a plurality of campaigns (i.e. pools) may be distributed (i.e. operable to transfer and provide) throughout a plurality of data servers (22,62) (i.e. distribution modules) which are coupled to dial servers (24,64) (i.e. dialing devices). Furthermore, it is implicit that such a configuration provides redundancy.

7. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Szlam et al. in view of US patent 6,198,814 to Gill. As shown above, Szlam et al. teaches the system of claim 1. Furthermore, Szlam et al. teaches a host (10) (i.e. a call record database) responsible for providing call records to controller (11) (i.e. associated with the distribution module). However, this reference does not teach the call record database operable to store the call records and the call attempt results.

Nevertheless, Gill discloses a "System and method for entering call outcome records in a computer database in an outbound predictive dialing application". The invention provides, a method of entering call results (i.e. and the call attempt results) in a computer database (i.e. call

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record database), said method comprising storing contact information (i.e. operable to store the call records) [see Gill col. 2, line 30].

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to extend the system of Szlam et al. such that the host (10) (i.e. call record database) stored call results as well as contact information (i.e. call records), since this would ensure that the status of previous call attempts would be available to agents handling a particular call record for the first time.

8. Claims 4-7, 16 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Szlam et al.

Regarding claim 4, as shown above, Szlam et al. teaches the system of claim 1. However, this reference does not teach the distribution module routes the queues over TCP/IP to the dialing devices.

Nevertheless, it would have been obvious to one of ordinary skill in the art at the time the invention was made to specify that the network (14) that couples the distribution module to the agent workstation, fax server and modem server (i.e. dialing devices), should be a TCP/IP routed network, since such networks are well-known and readily procurable.

Similarly, regarding claim 6, simply specifying that the distribution module comprises a TCP/IP compatible component is not allowable over the prior art.

Regarding claim 5, it would have been obvious to specify network (14) as an ATM routed network.

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Regarding claim 7, further note that the use of predictive dialers is well-known in the art. Applicant is directed to the pertinent prior art listed below, which is representative of an expansive body of prior art that discloses the use of predictive dialers.

Regarding claim 16, browser based, online interfaces are well-known in the art for providing user interfaces.

Regarding claim 33, as shown above, Szlam et al. teaches the method of claim 29. Furthermore, transferring call records from the pools to the queue comprises transferring call records from more than one pool to one queue, is simply the process of multiplexing data (i.e. call records) from different sources (i.e. more than one pool) onto the same transmission medium (i.e. one queue). This concept is well-known in the art, and therefore, unpatentable.

It should be noted that such features are merely design choices, and therefore, not allowable over the prior art.

Allowable Subject Matter

9. Claims 17, 18, 28, 36, 37 and 44-47 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

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Regarding claims 17 and 18, no prior art was found, which disclosed a contingency module responsible for securing call records within a dialing device upon failure of the distribution module.

Regarding claim 28, no prior art was found that teaches the distribution module transfers call records from the first pool to a first queue and call records from the second pool to a second queue where the distribution module transfers call records from the first pool to the first and second queues when the second pool contains no call records.

Regarding claim 44, while Szlam et al. does teach assigning a priority to a campaign (i.e. pool), this reference does not disclose using priority to select which campaigns (i.e. pools) will transfer call records to the queues [see Szlam et al. col. 13, line 40]. Furthermore, no other prior art encountered disclosed the foregoing subject matter.

Regarding claim 36, similarly, no art was found that discloses changing which campaigns (i.e. pools) transfer call records to a particular queue without stopping the campaign.

Regarding claim 45, US patent 5,594,790 to Curreri et al. discloses a “Method for selecting and controlling the automatic dialing of a call record campaign”. In the disclosure, Curreri et al. teaches generating multiple campaigns (i.e. pools) according to selection criteria (i.e. selection rules) as well as the allocation of resources (i.e. queues) to service multiple campaigns occurring simultaneously [see Curreri et al. col. 8, line 25; abstract]. However, this reference does not teach selection rules comprise two or more pools simultaneously transferring call records to the queues.

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Regarding claim 46, no prior art references were found that disclosed locking the call records to each dialing device; creating a plurality of contingency files specific for each dialing device; and updating the contingency files with call attempt results.

Regarding claim 47, US patent 4,881,261 to Oliphant et al. discloses a “Method for predictive pacing of calls in a calling system”. In the disclosure, Oliphant et al. teaches multiple campaigns (i.e. first pool and second pool) assigned to different queues (i.e. transferring call records from a first pool to a first queue; transferring call records from a second pool to a second queue) [see Oliphant et al. col. 7, line30]. However, this reference does not teach transferring call records from the first pool to the first and second queues when the second pool becomes depleted.

Regarding claim 37, similarly, no prior art was found that discloses the pools transferring call records to a first queue with the ability to transfer call records to a second queue if the pools transferring call records to the second queue become depleted.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. Vilsoet et al. US patent 5,546,456 discloses a “Telecommunication system with inbound call responsive predictive outdialing system and method”.

b. Kneipp US patent 5,343,518 discloses a “System and method for controlling the dialing order of call record lists in an automated dialing system”.

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c. Smith et al. US patent 5,592,543 discloses a "Method and system for allocating agent resources to a telephone call campaign".

d. Smith et al. US patent 6,587,557 discloses a "System and method of distributing outbound telephony services over a computer network".

e. Smith et al. US patent 5,822,400 discloses a "Call record scheduling system and method".

f. Smith et al. US patent 5,295,184 discloses "Dynamically adjustable call pacing system".

g. Ramot et al. US patent 5,341,412 discloses an "Apparatus and a method for predictive call dialing".

h. Svoronos et al. US patent 5,802,161 discloses a "Method and system for optimized scheduling".

i. Mark et al. US patent 6,278,776 discloses "Outbound switch pacing".

j. Cave et al. US patent 5,570,419 discloses a "System and method for an improved predictive dialer".

k. Grossman et al. US patent 5,436,965 discloses a "Method and system for optimization of telephone contact campaigns".

l. Kamel et al. US patent app. US 2001/0014145 discloses a "Telephony system for delivering promotional messages".

m. Haigh US patent 5,793,861 discloses a "Transaction processing system and method".

Double Patenting

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

12. Claim 1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/095,513. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed invention in the instant application is fully disclosed in claim 1 of application 10/095,513 and it is broader than the claimed invention in that application, because it includes all the limitations of claim 1 in the referenced application, except "a goal

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module...". No new invention, or new improvement is being claimed in the instant application. Applicant is now attempting to claim broadly that which had been previously described in more detail in the claims of application 10/095,513 (In re Van Ornum, 214 USPQ 761 CCPA 1982).

Furthermore, there is no apparent reason why Applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the other application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sadiki Mwanyoha whose telephone number is 703-305-3417. The examiner can normally be reached on 8:30-5:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad Matar can be reached on 703-305-4731. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4750.

spm

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A handwritten signature in black ink, appearing to read "Ahmad Matar". The signature is fluid and cursive, with the first name "Ahmad" and last name "Matar" clearly distinguishable.

AHMAD MATAR
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600